

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 10,170  
 )  
Appeal of )

# INTRODUCTION

The petitioners appeal the Department's decision that their court-appointed wards are ineligible for ANFC and General Assistance.

## FINDINGS OF FACT

1. The petitioners, who are husband and wife, became the court-appointed guardians of three little boys (ages nine, eight, and five) in July of 1990, when the children's mother was incarcerated in a federal penitentiary. The children's father was already and continues to be incarcerated.

2. The petitioners are long-time friends of the boys' mother and agreed to take the children because the mother did not want the children to become wards of the state. The children are doing well in the petitioners' care and regularly attend school, an apparent improvement over their prior situation. The petitioners receive a good deal of moral support and other assistance from community based organizations.

3. Before the boys' mother was incarcerated, she had received ANFC on behalf of herself and the children. The petitioner-guardians applied to have the children's ANFC

reinstated in July of 1990, but were denied because the boys do not live with relatives. They were successful, however, in obtaining Medicaid and Food Stamps for the children.

4. The petitioners' monthly income is \$628.97 based on the husband's earnings. An adult disabled cousin also lives with the petitioners whose income from SSI is \$450.00 per month. The family's monthly apartment rent is \$450.00. The petitioners have been caring for the children and paying their expenses since July. Their oil, gas and electric bills have increased due to the presence of the children but they are not in danger of shut-off or eviction.

5. Because the petitioners are having difficulty paying for the personal needs (clothing, etc.) of the boys, they applied for General Assistance on December 14, 1990 for "money to help with the children." They were denied because the "children are not dependents and cannot be applicants on their own."

6. On January 10, 1991, the petitioners reapplied for ANFC and were found to be ineligible because the "children are not related to you."

ORDER

The Department's decision denying ANFC is affirmed. The Department's decision that guardians cannot apply for General Assistance solely for their minor non-relative wards is reversed.

REASONS

The petitioners are not related in any way to the children for which they seek assistance but are, instead, their court-appointed legal guardians. Because the children reside with the petitioners, and not with relatives, the children are not eligible under federal and state regulations for the Aid to Needy Family with Children program. A copy of the Board's decision in Fair Hearing No. 10,208, which decides the identical legal issue, is attached hereto, detailing the legal rationale.

The eligibility of the petitioners' two young wards for the state funded General Assistance program requires a different analysis, however. The Department is correct in its determination that the two children are not the dependents of the guardian-petitioners and, as such, must be excluded from any application the petitioners' themselves might make. The G.A. statute specifically restricts assistance to the "families" of applicants which are defined as "persons whom the recipient of G.A. is required by law to support." 33 V.S.A. § 3001(2)<sup>1</sup> The Department's contention, however, that the guardians may not apply separately for only the needs of their wards, appears to be without support in the statute and regulations.

The General Assistance statute defines eligibility as follows:

Eligibility

(a) Consistent with available appropriations, the

department of social welfare shall furnish general assistance under this chapter, except as provided below, to any otherwise eligible individual unable to provide the necessities of life for himself and for those whom he is legally obligated to support. Except for those in catastrophic situations as defined in regulations, no general assistance shall be provided in the following situations:

- (1) To any individual whose income from any source, including the department of social welfare, during the 30 days immediately preceding the date on which assistance is sought is equal to the general assistance eligibility standard;
  - (2) To any able-bodied individual without minor dependents included in his application.
- (b) Eligibility standards for general assistance as established by the commissioner need not be the same as those applicable to the department's categorical assistance programs. In addition, in determining eligibility, the commissioner, pursuant to regulation, may take into account payment to or for the benefit of the applicant under any department program.
- (c) It is further provided that in determining eligibility apart from the need standard, the commissioner may promulgate a reasonable standard pertaining to work-related efforts on the part of the applicant.
- (d) Except for relief as provided in subchapter 2 of this chapter, general assistance to transients shall be limited to that necessary to permit the transient to leave the state.
- (e) As used in this section, "able-bodied individual" does not include a person subject to such conditions as are determined, by regulation of the commissioner of social welfare, to constitute barriers to employment.--Added 1967, No 147 § 7, eff. Oct 1, 1978; amended 1973, No. 152 (adj. Sess.), § 25 eff. 30 days from March 15, 1974; No. 207 (Adj. Sess.), § 3 eff. July 1, 1974;

1975, No. 132 (adj. Sess.), § 1, eff. Feb. 5, 1976.

33 V.S.A. § 3004

There is nothing in the statute which prohibits the Department from assisting minor applicants or limits payment to minor indigents based upon their residence with non-relative court-appointed guardians. The statute requires that assistance be furnished to any individual who is unable to provide the necessities of life for himself or herself, and does not have sufficient income, and has minor dependents, or is not "able-bodied". The regulations promulgated by the Department reflect the criteria of the statute:

Eligibility Criteria

- A. General Assistance shall be granted to eligible individuals and families to meet emergency needs only, according to Department standards, when such need cannot be met under any other Department program.

To have their eligibility for General Assistance considered, all applicants or their authorized representatives must:

1. Submit a completed signed application each time they request assistance.
2. Have a fact-to-face interview with the General Assistance or Intake Specialist, unless waived by the District Director.

- B. Except as specifically provided in 2602 (catastrophic situations), General Assistance shall be granted to applicants who have no minor dependents included in their application only if they:

1. Are not able-bodied (see 2601 p.1) and meet the conditions of C (1-6) below,

2. Are able-bodied, have two or more of the employment barriers as defined in 2607.1 (c), and meet the conditions of C (1-6) below.

The spouse of an individual who meets criteria 1 or 2 listed above shall have his needs met in the General Assistance grant provided that both members of the couple have met the eligibility criteria of C (1-6).

- C. Except as specifically provided in 2602 (catastrophic situations) General Assistance shall be granted to those applicants who have minor dependents included in their application only if they:

1. Have received during the 30-day period immediately prior to application net income computed pursuant to General Assistance regulations which is below the applicable ANFC payment level for that size household in similar living arrangements.
2. Have not been disqualified for ANFC or Medicaid benefits because of their refusal to comply with a program eligibility requirement; and:

If a GA applicant has been disqualified for ANFC or Medicaid benefits due to a refusal to comply, the duration of the disqualification period for GA will be a minimum of 30 days, or the length of the disqualification period for the other program, whichever is longer.

For example, if an ANFC-UP applicant has refused to cooperate with WIN Program requirements and is disqualified for ANFC for a 40-day period, he will also be disqualified for GA for a 40-day period. If, however, he were disqualified for ANFC for less than a 30-day period, his disqualification for GA would extend for 30 days.

3. Actively pursue all potential sources of income, such as: ANFC, SSI/AABD, Medicaid, Social Security benefits, Veterans benefits, wages, unemployment or workmen's compensation, support, insurance, etc. Pursuit of income means initiating an application and cooperating with requirements for a timely decision; and:
4. Have emergency need; and:

5. Have exhausted all available income and resources except that:
  - a. Applicants who have available resources less than their need shall have the amount of the resources deducted from the G.A. grant.
  - b. Single individuals age 62 or over, or in receipt of SSI/AABD or social security based on blindness or disability, may have up to \$1,500 of available resources disregarded. A married couple, either of which meets the above criteria, may have up to \$2,250 of available resources disregarded. Only resources in excess of these amount swill be counted as "available" in determining eligibility or benefits for such persons, excluding eligibility and benefits payable relating to burial expenses (Section 2640 - 2648).
  - c. Resources which have been set aside in an escrow account for the purpose of paying property taxes or insurance shall be disregarded except as to their availability for payment of such intended expenses.
6. Have complied with the employment requirements in 2607.1, if applicable.

W.A.M. § 2600 (emphasis added)

The petitioner-guardians' wards are children who were former ANFC recipients, have no estate of their own, and have no means of support other than that which could be provided by their parents who are both in jail. The guardians themselves have a duty to manage the estate of the children and to provide for their maintenance out of that estate but have no legal obligation to contribute to that estate from their own personal funds. 14 V.S.A. § 2797

There is nothing in the regulations which even remotely

suggest that a guardian's income should be included when determining an applicant ward's eligibility. See W.A.M. ¶ 2608 As such, it must be found that the children themselves have no income with which to meet their needs.

Neither could it be said that these elementary school-aged children are "able-bodied" in the sense intended by the statute which implies the capacity to support one's self through employment. In its regulation relating to employment requirement exemptions for G.A., the Department specifically recognizes what would otherwise be obvious:

Any individual included in the application shall be exempt from the employment requirements (2607.1) if such individual:

a. Is under age 16; . . .

W.A.M. 2607.2

As there is nothing in the regulations which prohibit guardians, as the authorized representatives, from applying for the needs of their wards, it must be concluded that the wards' eligibility must be determined as for any other individual applicant. This result is consistent with the goal of the G.A. program which is to assist persons in need who have no income or resources, no ability to work and who are not eligible for other assistance programs. These children as individuals fit perfectly into that category as there is no income available from their incarcerated parents or anyone else who has a legal duty to support them to meet their needs, they obviously cannot work to support



themselves, and they are now ineligible for ANFC because they reside with non-relative guardians.

General Assistance, unlike ANFC, is not an entitlement program and the extent to which any particular payment will be made to these children requires a showing by the wards that they are in need of specific items (clothes, toiletries, any shelter or utility costs specific to them, etc.) which cannot be provided through other means or programs.<sup>2</sup> There is no evidence before the Board which would indicate a specific need at this time and no ruling is being made with regard to that issue. This order is intended only to resolve the threshold question of whether the children themselves through their guardian representatives are proper applicants for General Assistance. That question is answered in the affirmative.<sup>3</sup>

FOOTNOTES

<sup>1</sup>Without the children, the petitioners' have several impediments (which they do not dispute) to their own G.A. application including their income, ability to work and lack of dependents. See W.A.M. 9 2600 et. seq.

<sup>2</sup>The wards have already demonstrated that they have applied for all other Department operated programs including ANFC, Medicaid, and Food Stamps.

<sup>3</sup>Neither the petitioners, who were unable to obtain legal representation and appeared pro se, nor the Department filed briefs in this matter.